

FILED '07 JAN 25 11:40 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN DALE STENZ,

Petitioner,

Civil No. 06-1491-TC

v.

FINDINGS AND
RECOMMENDATION

CHUCK SEELEY,

Respondent.

COFFIN, Magistrate Judge.

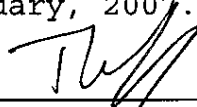
By Order (#7) entered December 13, 2006, petitioner was allowed until January 16, 2007, to pay the \$5.00 filing fee applicable to proceeding under 28 U.S.C. § 2254 and advised that failure to do so would result in the dismissal of this proceeding for failure to prosecute.

Petitioner has not paid the filing fee as ordered or

requested an extension of time to do so. Accordingly, pursuant to the court's Order (#7) petitioner's Petition (#3) should be denied without prejudice. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 25th day of January, 2007.



Thomas M. Coffin
United States Magistrate Judge